

REPRESENTATIVE FOR PETITIONER:

Richard R. Cimini, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Brian A. Cusimano, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Richard R. Cimini)	Petition No.: 44-010-16-1-5-01074-17
)	
Petitioner,)	
)	
v.)	Parcel No.: 44-10-30-400-030.019-010
)	
LaGrange County Assessor,)	
)	County: LaGrange
Respondent.)	Assessment Year: 2016

Appeal from the Final Determination of the
LaGrange County Property Tax Assessment Board of Appeals

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

1. Richard R. Cimini (“Petitioner”) initiated the 2016 appeal by filing a Form 130 with the LaGrange County Assessor on February 9, 2017. On June 23, 2017, the LaGrange County Property Tax Assessment Board of Appeals (“PTABOA”) issued its final

determination upholding the assessment. On July 7, 2017, Petitioner timely filed a Form 131 with the Board.

2. On May 23, 2018, the Board's designated administrative law judge ("ALJ"), Ellen Yuhan, held a hearing on Petitioner's appeal. Neither the ALJ nor the Board inspected the property.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. The following people were sworn and testified:

For Petitioner: Richard R. Cimini, Owner,
For Respondent: Pat Monroe, LaGrange County Assessor.¹

4. Petitioner offered the following exhibits:

Petitioner Exhibit 1:	Letter from the Johnson Township Trustee,
Petitioner Exhibit 2:	List of over-assessments and taxes on trailer,
Petitioner Exhibit 3:	LaGrange County Mobile Home Tax Statement for 1987,
Petitioner Exhibit 4:	Beacon information and property record card ("PRC") for 815 E 680 S,
Petitioner Exhibit 5:	Beacon information and PRC for 1085 E 700 S,
Petitioner Exhibit 6:	Beacon information and PRC for 1095 E 700 S,
Petitioner Exhibit 7:	Beacon information and PRC for 6570 S 070 E,
Petitioner Exhibit 8:	Beacon information and PRC for 7500 S 220 E,
Petitioner Exhibit 9:	Beacon information, PRC, and photograph for 325 E 745 S,
Petitioner Exhibit 10:	Trailer information for Hackenburg Lake,
Petitioner Exhibit 11:	Costs to build existing garage,
Petitioner Exhibit 12:	Costs to build new garage,
Petitioner Exhibit 13:	Costs for cement wall/driveway,
Petitioner Exhibit 14:	Receipt for canopy,
Petitioner Exhibit 15:	Two photographs of foundation and certificate of title for mobile home,
Petitioner Exhibit 16:	LaGrange County Reassessment brochure for 1995,
Petitioner Exhibit 17:	National Automobile Dealers Association ("NADA") Guides Value Report.

5. Respondent offered the following exhibits:

Respondent Exhibit A:	PRC for the subject property,
Respondent Exhibit B:	NADA Guides Used Value Report.

¹ Joshua D. Pettit, Nexus District Supervisor, was present but did not testify.

6. The record also includes the following: (1) all pleadings, briefs, and documents filed in the current appeal; (2) all orders, notices, and memoranda issued by the Board or the ALJ; (3) the digital recording of the hearing; and (4) these Findings and Conclusions.
7. The subject property is an improved residential property located at 915 E 680 S in Wolcottville.
8. For 2016, the PTABOA determined a total assessment of \$145,000 (\$115,500 for the land and \$29,500 for the improvements).
9. Petitioner requested a total assessment of \$66,300 (\$61,800 for the land and \$4,500 for the improvements).

Burden

10. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
11. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).
12. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d),

“if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).

13. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
14. The Board determined a 2015 value of \$145,000 as the result of an appeal for that year. The assessed value remained the same for 2016. Petitioner, therefore, has the burden of proof.

SUMMARY OF PARTIES' CONTENTIONS

Petitioner's case

15. Petitioner contends the land is assessed too high. In 2015, he contends the land assessment increased from \$750 per front foot to \$1,765 per front foot. *Cimini testimony.*
16. Petitioner contends Westler Lake is a restricted lake and, like other restricted lakes, is a “no-wake” lake. Waterskiing, tubing, and wakeboarding are not allowed on Westler Lake. He contends that other such restricted lakes are assessed at between \$600 and \$700 per foot. Petitioner contends that Respondent has Westler Lake valued like the open and unrestricted sport lakes in LaGrange County and that such valuation is not fair. *Cimini testimony.*
17. Petitioner contends taxpayers with larger homes on Westler Lake did not notice the increase in land value because, when the county raised the land values, it compensated by reducing the improvement assessments. According to Petitioner, the county is discriminating against the people that have lots without more extravagant improvements. *Cimini testimony.*

18. Petitioner pointed to four properties on Hackenburg Lake. He contends that the trailers located there are assessed between \$800 and \$1,000. In contrast, his trailer is valued at \$29,500. *Cimini testimony; Pet'r Ex. 10.*
19. Petitioner contends he completed a mobile home worksheet and returned it to the Johnson Township Trustee in 2008. He contends it was then sent to Respondent's office. He claims all of the mobile homes except his were changed to personal property. He claims to have specifically found four properties on Westler Lake with trailers that were changed to personal property. *Cimini testimony; Pet'r Exs. 4-7.*
20. Petitioner also contends the mobile home is personal property and not real property. He has a title for it and claims to have paid sales tax on it when he purchased it. He contends that it has no foundation and has a hitch and axles. *Cimini testimony; Pet'r Exs. 3 & 15.*
21. Petitioner contends he got a value from NADA showing a value of \$4,045.82 for a 1978 Redman trailer, which is newer than his trailer (but notes that 1978 is as far as NADA went back). He used a Redman because that's what Respondent's attorney used. Petitioner contends his value should be closer to the \$1,000 that he was told by Respondent's office in 2008, or somewhere between \$590 and \$800 which would be similar to comparable trailers in LaGrange County. *Cimini testimony; Pet'r Ex. 17.*
22. Petitioner contends the garage is over-assessed. He paid \$7,600 to build the garage 22 years ago. He claims that a local contractor could build a new garage for \$8,075. Furthermore, if he built the garage himself, he could purchase a garage kit from Menards for \$4,731.22. *Cimini testimony; Pet'r Exs. 11 & 12.*
23. Petitioner contends the canopy is assessed at \$800 but he claims to have only paid \$300 for it in 1976. He claims that no depreciation has been applied to the canopy on the PRC. *Cimini testimony; Pet'r Ex. 14.*

24. Petitioner contends the LaGrange County Board of Trustees published a brochure stating property is supposed to be assessed at “one-third of the true tax value” which he claims is not being done. *Cimini testimony; Pet’r Ex. 16.*

Respondent’s case:

25. Respondent contends the PRC shows the land has been consistently assessed at \$115,500. *Monroe testimony; Resp’t Ex. A.*

26. Respondent contends there are two values listed for improvements for 2016 on page 1 of the PRC. He contends that the “Work in Progress” value does not include the mobile home, but does include the two utility sheds, a concrete patio, a detached garage, and the canopy. After normal depreciation is applied, the assessed value of those improvements is \$12,800. *Monroe testimony; Resp’t Ex. A.*

27. Respondent contends Petitioner provided proof of title to the mobile home. Respondent used the NADA guide to find the value of the mobile home and then added the same additional features that Petitioner included on the NADA report he submitted. He claims if the mobile home were separately assessed as personal property, the value would be \$4,845.26. *Monroe testimony; Resp’t Ex. B; Pet’r Ex. 17.*

ANALYSIS

28. Indiana assesses real property based on its true tax value, which the 2011 Real Property Assessment Manual defines as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). Evidence in a tax appeal must be consistent with that standard. *See id.* For example, a market value-in-use appraisal prepared according to USPAP often will be probative. *See id.; see also, Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax. Ct. 2005). Actual construction costs, sale or assessment information for the subject or comparable properties, and any other information compiled according to generally acceptable appraisal principles may also be

probative. *See Kooshtard Property VI*, 836 N.E.2d at 506 n.6; *see also* Ind. Code. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).

29. Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for 2016 was January 1, 2016. Ind. Code § 6-1.1-2-1.5.
30. Petitioner challenges the subject mobile home's classification as real property. The parties appear to agree that the mobile home should be assessed as personal property. Petitioner submitted the title for the mobile home issued by the Indiana Bureau of Motor Vehicles and photographs showing the foundation was not permanent. Respondent agreed that Petitioner had provided proof of title.
31. If the home has a certificate of title issued by the Indiana Bureau of Motor Vehicles under Ind. Code § 9-17-6 and is not on a permanent foundation, the DLGF's regulations define it as an "annually assessed mobile home" 50 IAC 3.3-2-2. Annually assessed mobile homes and exterior features, yard structures, and improvements owned by the mobile home owner and located on the same parcel as the mobile home, are assessed on January 15 of each year. 50 IAC 3.3-3-1(d); 50 IAC 3.3-4-1(a). All annually assessed mobile homes assessed after January 14, 2007, shall have a true tax value the least of the values determined using:
 - (1) the National Automobile Dealers Association Guide;
 - (2) the purchase price of the mobile home if the:
 - (A) sale is of a commercial enterprise nature;
 - (B) buyer and seller are not related by blood or marriage; and
 - (C) sale date is within one (1) year prior to or subsequent to the January 15 valuation date; or
 - (3) sales data for generally comparable mobile homes.

50 IAC 3.3-5-1; *see also* 50 IAC 3.3-3-1(d) and I. C. § 6-1.1-31-7(b)(6).

32. Petitioner provided a value from NADA of \$4,054, but the value was not for the type of mobile home that Petitioner owns. Respondent, however, did provide a value for a 1977 Concord mobile home. Using the same additional features Petitioner used on his NADA calculation, the value was \$4,845.
33. Respondent submitted a PRC for the subject property showing the new improvement value without the mobile home. Respondent calculated the improvements at \$12,800, which is a decrease from the original improvement value of \$29,500.
34. Petitioner also contends the garage is over-assessed based on construction costs. Petitioner submitted a list of receipts from 1993 that allegedly are the costs associated with the construction of the garage. The costs are not reflective of the appealed assessment date and did not include all of the costs associated with the construction.
35. Petitioner submitted a quote from a construction company for a garage and an ad from the Menards website to support his claim that the garage is over-assessed. The quote from the construction company did not include a cost for a foundation and the ad from Menards did not include any labor costs. As a result, Petitioner failed to provide probative evidence for a change in the garage value.
36. Petitioner claims the canopy on the mobile home is over-assessed, that no depreciation was applied to it, and that he submitted a receipt for it from 1976. The 1976 cost of the canopy is not reflective of the assessment date. Further, the PRC shows that Respondent applied normal depreciation to the canopy. Consequently, Petitioner failed to provide evidence to warrant a change in the value.
37. Petitioner contends the subject property is located on a restricted lake and is over-assessed when compared to land located on other restricted lakes. He failed, however, to present any evidence to support his contention. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its

determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).

38. Petitioner also contends the property should be assessed at one-third of its true tax value. Pursuant to Ind. Code § 6-1.1-1-3(a), "assessed value" or "assessed valuation" means an amount equal to:

(1) for assessment dates before March 1, 2001, thirty-three and a third percent (33 1/3%) of the true tax value of property; and

(2) for assessment dates after February 28 2001, the true tax value.

Therefore, Petitioner's property is correctly assessed at 100% of true tax value.

SUMMARY OF FINAL DETERMINATION

39. The Board finds Petitioner's property should be assessed at \$115,500 for the land and \$12,800 for the improvements for a total of \$128,300. The Board further finds that the mobile home should be valued as an annually assessed mobile home.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.